

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS,)
Plaintiff)
)
)
v.) CIVIL ACTION NO. 04-30126-MAP
)
CARDIAC SCIENCE, INC,)
Defendant)

SCHEUDLING ORDER

February 9, 2007

PONSOR, U.S.D.J.

On September 29, 2006, the court granted Plaintiff's Motion for Relief from the court's June 23, 2005 Order allowing Cardiac Science's Motion for Summary Judgment (Dkt. No. 108). The foundation for the court's ruling was Plaintiff's contention, eventually conceded by Cardiac Science, that Cardiac Science made misrepresentations regarding its possession of certain license rights to Plaintiff's intellectual property when it knew that these rights had been transferred to a third party. The allowance of Plaintiff's motion for relief left open Plaintiff's claim against Cardiac Science, and on November 1, 2006, the parties appeared before this court for a conference as to future proceedings.

At that time, counsel for Cardiac Science acknowledged and apologized for his client's error, but argued that the

effect of these misrepresentations was insubstantial. Cardiac Science's counsel asked for an opportunity to re-brief his Motion for Summary Judgment in light of the now acknowledged true factual backdrop. Plaintiff, appearing pro se, sought an immediate assignment of the case for jury trial.

Following discussions with the parties, the court made a recommendation for settlement of this matter and gave the parties until November 15, 2006 to report back to the court. Much to its disappointment, the court subsequently learned that the matter did not reach a settlement.

Having now had an opportunity to consider the future course in this case, the court must conclude that Defendant is entitled to re-submit its Motion for Summary Judgment, with a factual underpinning that fully corresponds to the real situation confronting the parties. However, out of concern that Plaintiff's rights be protected, the court will also set the case for trial.

Based on the foregoing, the court orders as follows:

1. The further Motion for Summary Judgment of Defendant Cardiac Science will be filed no later than March 9, 2007.
2. Plaintiff's opposition to the motion will be filed by April 9, 2007. The court will thereafter rule on the papers, or will set the matter for further oral argument.
3. Assuming that the Motion for Summary Judgment

is denied, trial in this matter will commence on September 10, 2007 at 10:00 a.m. Counsel will appear that day at 9:00 a.m. for a brief conference prior to commencement of jury selection. The trial will proceed thereafter from 9:00 a.m. to 1:00 p.m.

4. Proposed voir dire questions and proposed jury instructions will be filed no later than September 4, 2007.

5. Motions in limine, if any, will be filed by August 17, 2007 and opposed by August 31, 2007.

It is So Ordered.

/s/ Michael A. Ponsor

MICHAEL A. PONSOR

U. S. District Judge